



PUBLIC NOTICE

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DOMESTIC SECTION 214 APPLICATION GRANTED SUBJECT TO CONDITION

WC Docket No. 21-460

By this Public Notice, the Wireline Competition Bureau (Bureau) grants, as conditioned, an application filed by Laurie L. Osgood (Osgood), Direct Communications Rockland, Inc. (Direct Communications), UniTek, Inc. (UniTek), UniTel, Inc. (UniTel), and UniCap, Inc. (UniCap) (collectively, Applicants), pursuant to section 214 of the Communications Act of 1934, as amended, and sections 63.03-04 of the Commission's rules,¹ requesting consent to transfer control of UniTel and UniCap through the transfer of ownership of their existing parent, UniTek, from Osgood to Direct Communications.²

On December 8, 2021, the Bureau released a public notice seeking comment on the Application.³ We did not receive comments or petitions in opposition to the Application.

UniTek, a holding company, is the direct parent company and owner of 100% of the stock of Licensees UniTel and UniCap (all Maine corporations).⁴ UniTel, a rural incumbent local exchange carrier (LEC), provides telecommunications services to approximately 2,855 access lines in Kennebec, Penobscot, and Waldo Counties in central Maine.⁵ UniTel did not elect to receive model-based support and receives cost-based universal service support.⁶ UniCap, a reseller of interexchange long distance services, provides services in the service area of UniTel.⁷ Osgood, a citizen of the United States, in her capacity as trustee of Osgood Trust, owns 100% of the stock of UniTek.⁸

Direct Communications, an Idaho corporation, is an incumbent LEC in Idaho.⁹ Direct Communications has a direct ownership interest in Star Telephone, Inc. (Star) (100%), an incumbent LEC

¹ See 47 U.S.C. § 214; 47 CFR §§ 63.03-04.

² Application for Authorization Pursuant to Section 214 of the Communications Act of 1934 for Transfer of Control, WC Docket 21-460 (filed Nov. 22, 2021) (Application). Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

³ *Domestic Section 214 Application Filed for the Transfer of Control of Unitek, Inc. to Direct Communications Rockland, Inc.*, WC Docket No. 21-460, Public Notice, DA 21-1528 (WCB 2021).

⁴ Application at 4.

⁵ *Id.* at 7.

⁶ Universal Service Administrative Co., Tools, "ACAM, ACAM II and CAF BLS Buildout Requirements," <https://www.usac.org/high-cost/resources/tools/>.

⁷ Application at 7.

⁸ *Id.* at 4.

⁹ *Id.* at 5, 8.

in Louisiana, and Direct Communications Cedar Valley, LLC (DCCV) (62.50%), an incumbent LEC in Utah.¹⁰ DCCV wholly owns Rico Telephone Company (Rico), an incumbent LEC in Colorado.¹¹ Direct Communications' operating subsidiaries receive high-cost support through the different mechanisms of cost-based support and fixed model-based support. Direct Communications, Star, and DCCV did not elect to receive model-based support and receive cost-based universal service support.¹² Rico elected to receive fixed universal service support under the Alternative Connect America Cost Model (A-CAM).¹³ Direct Management Company, LLC (DMC) has a 100% direct ownership of Direct Communications by means of common stock voting interest.¹⁴ DMC's Members have an indirect ownership interest in Direct Communications by and through their DMC membership.¹⁵ The DMC Members are the following U.S. citizens: Timothy May (41.50%); Scott Hendrickson (18.50%); Jeremy Smith (18.50%); and Kip Wilson (18.50%).¹⁶

Pursuant to the terms of the proposed transaction, Direct Communications will acquire all of the stock of UniTek from Osgood.¹⁷ As a result, UniTek will be a direct, wholly owned subsidiary of Direct Communications.¹⁸ UniTel and UniCap will continue to be wholly owned by UniTek and, thus, will become indirect, wholly owned subsidiaries of Direct Communications.¹⁹

Discussion. The Applicants request approval to consummate transactions involving companies that receive high-cost universal service support under the different support mechanisms of fixed model-based support and cost-based support (a mixed support transaction). The Commission has found that this type of transaction could result in potential harm to its goal of ensuring that limited universal service funding is distributed efficiently and effectively.²⁰ When a company receiving a fixed level of support acquires or is acquired by a company receiving support based on its costs, the combined companies could, and in some instances might have an economic incentive to, shift certain shared or common costs from the model-based support company to the cost-based support company.²¹ If cost shifting were to occur, the combined company, post-transaction, could obtain more high cost universal service support than the two companies did as separate entities, not because of any new investment, expense, or buildout, but rather solely because of the application of accounting procedures.²² Such an outcome is inconsistent with the Commission's general expectation that transactions generate efficiencies that reduce the combined company's costs.²³ Moreover, providing additional universal service support to a company as a result of

¹⁰ *Id.* at 8.

¹¹ *Id.*

¹² Universal Service Administrative Co., Tools, "ACAM, ACAM II and CAF BLS Buildout Requirements," <https://www.usac.org/high-cost/resources/tools/>.

¹³ *Id.*

¹⁴ Application at 5.

¹⁵ *Id.*

¹⁶ *Id.* at 5-6.

¹⁷ *Id.* at 6.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Joint Application of W. Mansfield Jennings Limited Partnership and Hargray Communications Group, Inc. for Consent to the Transfer of Control of ComSouth Corporation Pursuant to Section 214 of the Communications Act of 1934*, WC Docket 18-52, Memorandum Opinion and Order, 33 FCC Rcd 4780, 4784, para. 19 (2018). (*Hargray/ComSouth Order*).

²¹ *Id.* at 4785-86, para. 20.

²² *Id.*

cost shifting solely because it acquired or merged with another company is not an efficient use of limited universal service resources.²⁴

In the *Hargray/ComSouth Order*, in which the Commission approved a mixed support transaction, it sought to prevent cost shifting and to protect the finite resources of the high-cost universal service fund by imposing a limited condition that capped high-cost universal service support based on the operating expenses of the entity receiving cost-based support.²⁵ The Commission also directed the Bureau to impose the same limited condition on future transactions between parties receiving different types of high-cost universal service support.²⁶

Because Direct Communications' subsidiary, Rico Telephone Company, receives model-based support and Direct Communications is acquiring UnitTel, which receives cost-based support, the potential for harm caused by cost-shifting is specific to the transaction. Accordingly, to mitigate the potential for cost shifting, we grant the Application subject to the condition adopted in the *Hargray/ComSouth Order*.²⁷ The combined operating expenses of each post-consummation company's rate-of-return affiliates²⁸ shall be capped at the averaged combined operating expenses of the three calendar years preceding the transactions' closing date for which the operating expense data are available.²⁹

The cap will apply to cost recovery under both HCLS and CAF-BLS and will be applied proportionately to each affiliate's accounts used to determine the affiliate's eligible operating expense for HCLS and CAF-BLS.³⁰ For example, if the cap requires that a post-consummation company's eligible operating expense be reduced by 10%, then each account used to determine each rate-of-return affiliate's eligible operating expenses shall be reduced by 10%.³¹ For purposes of this cap, operating expenses shall include maintenance, network support/network operations/general, benefits, rent expenses, and corporate operations, while depreciation, return on investment, and taxes shall be excluded.³²

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²³ *Id.*

²⁴ *Id.* at 4786, para. 21.

²⁵ *Id.* at 4788-90, paras. 26-31.

²⁶ *Id.* at 4789, para. 27, n.72.

²⁷ *Id.* at 4788-90, paras. 26-31.

²⁸ *See* 47 U.S.C. § 153(2).

²⁹ *Hargray/ComSouth Order* at 4788-89, para. 27. The cap will apply to the combined operating expenses of the post-consummation companies and any other existing rate-of-return affiliates that they may acquire during the time in which the condition is in effect (together, covered entities). To monitor compliance with the condition adopted herein, to the extent it does not already do so, we direct the covered entities to submit their relevant cost data to the National Exchange Carrier Association (NECA). We direct NECA to provide the dollar amount of the operating expense costs that will be capped pursuant to this Public Notice to the Universal Service Administrative Company (USAC) within 30 days following submission of any covered entity's cost data. We further direct NECA to provide USAC with the reductions in High-Cost Loop Support (HCLS) and Connect America Fund-Broadband Loop Support (CAF-BLS) for any covered entity pursuant to this Public Notice for each year following the effective date of this Public Notice. USAC shall validate all calculations received from NECA before making disbursements subject to any such support reductions. We also direct all covered entities to provide USAC with an annual certification of compliance on or before December 31 of each year for the duration of the condition. With the certification, each covered entity must also submit its latest audited financial statements to USAC, including all notes and consolidating statements, on an annual basis, by December 31 of each year. *Id.* at 4790, para. 31. We further direct Applicants to submit in the domestic section 214 docket a notice that the proposed transaction has closed with the consummation date and also provide a courtesy copy of the notice to hcinfo@usac.org.

³⁰ *Id.* at 4789, para. 28.

³¹ *Id.*

³² *Id.*

For all covered entities, the new cap shall also include an annual adjustment for inflation based on the Gross Domestic Product-Channel Price Index (GDP-CPI) for the years in which the new cap remains in effect.³³ This cap shall remain in effect for seven years from the consummation of the transactions.³⁴ The condition will also sunset if all of a post-consummation company's rate-of-return affiliates become model-based support companies at any point during the seven-year period.³⁵

We find that grant of the Application listed above, subject to compliance with the condition, will serve the public interest, convenience, and necessity.³⁶ Therefore, pursuant to section 214 of the Act, 47 U.S.C. § 214, and sections 0.91, 0.291, 63.03, and 63.04 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 63.03, and 63.04, the Bureau hereby grants the Application discussed in this Public Notice subject to compliance with the condition described above.³⁷

Pursuant to section 1.103 of the Commission's rules, 47 CFR § 1.103, the grant is effective upon release of this Public Notice. Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 CFR §§ 1.106, 1.115, may be filed within 30 days of the date of this Public Notice.

For further information, please contact Dennis Johnson, Wireline Competition Bureau, Competition Policy Division, (202) 418-0809.

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³³ *Id.* at 4790, para. 30.

³⁴ The Commission has found seven years to be an appropriate period over which to monitor enforcement of the condition and to ensure that the combined entity, which will continue to receive support, does not shift costs from year-to-year. *Id.* at 4789-90, para. 29, fn.78. The cap will not apply if the parties do not consummate the proposed transactions.

³⁵ *Id.* at 4789-90, para. 29.

³⁶ *See* 47 U.S.C. § 214(a); 47 CFR § 63.03.

³⁷ The Applicants in these proceedings provide incumbent LEC services in their respective study areas. Within 30 days of closing the proposed transactions, they must notify USAC so that it can make any appropriate changes to the High Cost Universal Broadband (HUBB) on-line location reporting portal for universal service recipients.